

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7042 OF 2024

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Raghunath Bhagwan Dalavi & Anr. ... Petitioners
V/s.
Balkrishna Vishnu Dalavi & Ors. ... Respondents

Mr. Bhushan Walimbe with Mr. Mayank Tripathi for the
petitioners.

CORAM : AMIT BORKAR, J.

DATED : JUNE 20, 2024

P.C.:

1. The petitioners are challenging orders passed by the Courts below rejecting the temporary injunction application filed by the petitioners seeking injunction against the defendants restraining them from disturbing the petitioners' exclusive possession over the agricultural land bearing Nos.93/2c, 92/1c and 764/5.
2. In support of the plea of oral partition in relation to aforesaid three properties, the petitioners placed on record document titled as memorandum of partition apart from affidavits of adjoining owners.
3. Both the Courts below have rejected the temporary injunction application holding that the memorandum of partition produced by the petitioners does not bear signatures of all the co-

sharers. The Courts below have also rejected the temporary injunction application on the ground that the alleged oral partition was effected prior to 40 to 50 years.

4. The petitioners being plaintiffs seeking injunction to protect their exclusive possession alleging that they are in possession of the agricultural properties for at least 40 years must produce other reliable documents to show actual possession over the suit properties. In the facts of the case, affidavits of adjoining owners cannot be treated as indisputable documents indicating actual possession of the plaintiffs over the suit properties. In absence of other reliable evidence, the view taken by the Courts below recording a finding of fact that the plaintiffs have failed to prove oral partition cannot be termed as perverse. The writ petition is, therefore, cannot be entertained. However, it is clarified that the findings recorded by the Courts below and this Court are only for the purpose of adjudicating the temporary injunction application and shall not be considered as conclusive at the time of trial by the suit.

5. All questions in relation to nature of the properties are kept open to be agitated during the trial. The validity and efficacy of memorandum of partition including evidentiary value shall also be decided during the trial.

6. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)